

Appl. No. 10/600,180
Atty. Docket No. 8980R2
Amdt. dated 20 January 2005
Reply to Office Action of 25 August 2005
Customer No. 27752

REMARKS

Claims 1-37 are pending in the present application.

Claim 1 has been cancelled, without prejudice.

Claims 2 and 7 have been amended to particularly point out and distinctly claim the subject matter that the applications regard as their invention. Support for the amendment is found throughout the specification and claims, as originally filed.

In addition, new claims 38, 39, 40 and 41 have been added. Support for the amendment is found throughout the specification and claims, as originally filed.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested

Rejection Under 35 USC 103(a) Over Fujiwara

Claims 1-37 have been rejected under 35 USC 103(a) as being unpatentable over WO 98/37866 to Fujiwara (hereinafter "Fujiwara"). Specifically, the Office Action states that Fujiwara teaches a mild surfactant system and a hydroxy carboxylic compound. Although Fujiwara is silent with respect to the pKa of the composition, the Office Action states that it would have been obvious to the skilled artisan to expect the subject composition to encompass the pKa of the claimed invention because each of the components are taught and required in their requisite proportions.

The Applicants respectfully direct the Examiner's attention to the "Amendments" section of the instant paper, in which the Applicants have cancelled claim 1, without prejudice, and amended claim 2. The Applicants have further added new claims 38, 39 and 40. In light of the present amendments, the Applicants submit that Fujiwara neither teaches nor suggests an antimicrobial composition having an organic acid and an anionic surfactant mixture having a characteristic selected from the group consisting of a linear alkyl chain having a chain length of from about C₄ to about C₇ and a total hydrophilic head group size of at least about 4 Angstroms; an unsaturated alkyl chain having a chain length of from about C₄ to about C₇; a branched alkyl chain having a chain length of from about C₄ to about C₇; and mixtures thereof, as now required by amended claim 2. Support for the amendment to claim 2 is found throughout the specification and claims as originally filed, and specifically at page 8 of the present specification.

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The Applicants further submit that Fujiwara neither teaches nor suggests an antimicrobial composition having an anionic surfactant mixture having a characteristic selected from the group consisting of: a linear alkyl chain having a chain length of from about C₄ to about C₁₂ and a total hydrophilic head group size of at least about 4 Angstroms; an unsaturated alkyl chain having a chain length of from about C₄ to about C₁₂; a branched alkyl chain having a chain length of from about C₄ to about C₁₂; and an organic acid selected from pyroglutamic acid, adipic acid, gluconic acid, gluconolactone acid, glutamic acid, glutaric acid, tartaric acid, ascorbic acid, benzoic acid, salicylic acid, malic acid, succinic acid and combinations thereof, as claimed in new claim 38. Support for the addition of new claim 38 is found on page 6 of the present specification. Rather, Fujiwara only teaches an antimicrobial composition having an anionic surfactant and an organic acid selected from: citric acid, lactic acid, glycolic acid, "-hydroxy C₈ acid", "-hydroxy C₁₆ acid", acylated citric acid and B-hydroxybutyric acid.

The Applicants further submit that Fujiwara neither teaches nor suggests an antimicrobial composition comprising alkyl glycerol sulfonate (AGS) with a chain length of from C₄ to C₁₁, along with an organic acid selected from the group consisting of: pyroglutamic acid, adipic acid, gluconic acid, gluconolactone acid, glutamic acid, glutaric acid, glycolic acid, tartaric acid, ascorbic acid, benzoic acid, salicylic acid, citric acid, malic acid, succinic acid, lactic acid and combinations thereof, as claimed in new claim 39. Support for the addition of new claim 39 is found at page 9 of the present specification. Rather, Fujiwara only discloses sodium coco glyceryl ether sulfonate, which comprises a longer carbon chain length than that now recited by new claim 38.

Moreover, the Applicants submit that Fujiwara fails to teach or suggest an antimicrobial composition having all of the limitations of new claim 39, along with an anionic surfactant mixture having a characteristic selected from the group consisting of: a linear alkyl chain having a chain length of from about C₄ to about C₁₂ and a total hydrophilic head group size of at least about 4 Angstroms; an unsaturated alkyl chain having a chain length of from about C₄ to about C₁₂; a branched alkyl chain having a chain length of from about C₄ to about C₁₂, as claimed in new claim 40. Support for this amendment is found on page 7 of the present specification. Nor does Fujiwara teach or suggest an antimicrobial composition having all of the limitations of claim 39, as well as a sulfonate-containing anionic or zwitterionic surfactant having a chain length of from C₁₂-C₁₈, as claimed in new claim 41. Support for this amendment is found at pages 7 and 14 of the present specification. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection to claims 1 to 37 under 35 USC 103(a) over Fujiwara.

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Rejection Under 35 USC 103(a) Over Vermeer

The Office Action states that claims 1 to 37 are rejected under 35 USC 103(a) as being unpatentable over US Patent Number 5,653,970 to Vermeer, et al (hereinafter "Vermeer"). Specifically, the Office Action states that Vermeer teaches a cleansing composition comprising an alkyl aldonomide, anionic surfactant, skin-conditioning agents, sequestering agents, antimicrobial agents, pH-control agents, oils and complexing agents,. Although the reference does not teach the complete concentration ranges, the Office Action states that differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. The Applicants respectfully disagree with the finding of obviousness.

Initially, the Applicants direct the Examiner's attention to the "Amendments" section of the instant paper, in which the Applicants have cancelled claim 1, without prejudice. Further, the Applicants wish to direct the Examiner's attention to Columns 43 and 44 of the Vermeer reference. These portions of Vermeer, among others, clearly establish that the compositions described therein possess a pH of from about 5 to about 9, or from about 5.5 to about 8.5. Indeed, the Vermeer reference repeatedly discloses that a pH control agent or a buffering salt pair must be provided in the subject compositions in amounts sufficient to result in the above-listed pH levels. Conversely, the present application relates to antimicrobial compositions having a pH of from about 2.0 to about 4.5. The Applicants wish to note that the pH level of the compositions of the present invention is a material limitation of present claim 2, from which the balance of the rejected claims ultimately depend. The Applicants submit that the pH level of the present compositions is required to maintain the antimicrobial efficacy of the present anionic surfactant mixture. Indeed, the Applicants have learned that an anionic surfactant, and particularly those described in the present application and in Vermeer, lose substantially all antimicrobial activity above a pH of about 4.5. It is clear that the Vermeer reference discloses the use of the subject anionic surfactant for cleaning and/or emulsification benefits, and not to convey antimicrobial benefits. Thus, the Applicants submit that the compositions of the present invention are clearly outside the pH range of the Vermeer reference and that the pH level of the present compositions is necessary to sustain the antimicrobial activity of the claimed anionic surfactant mixture, and thus, the overall antimicrobial efficacy of the claimed compositions. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection to claims 1 to 37 under 35 USC 103(a).

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Double Patenting

The Office Action states that claims 1 to 37 are provisionally rejected under 35 USC 101 as claiming the same invention as that of claims 1-39 and 1-47 of co-pending Application Serial Numbers 09/177,445 and 10/263,211, respectively. The Applicants respectfully submit that the present application is a continuation-in-part of Application Serial Number 09/177,445 and a family member of Application Serial Number 10/263,211. The Applicants shall file a terminal disclaimer in the present case to obviate this rejection upon notification of allowable subject matter in the present application. Accordingly, the Applicants respectfully request a stay of this rejection until such time.

Conclusion

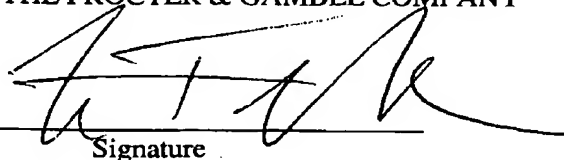
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC 103(a). Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 2-41

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By



Signature

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